

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLACKWATER SECURITY CONSULTING,
LLC, a Delaware Limited Liability Company; and
BLACKWATER LODGE AND TRAINING
CENTER, INC., a Delaware Corporation,

Plaintiffs,

v.

WESTCHESTER SURPLUS LINES INSURANCE
COMPANY, a Georgia Corporation; EVANSTON
INSURANCE COMPANY, an Illinois Corporation;
FIDELITY AND CASUALTY COMPANY OF
NEW YORK, a South Carolina Corporation; and
LIBERTY INSURANCE UNDERWRITERS, a
Massachusetts Corporation,

Defendants.

CIVIL ACTION

NO. 05-CV-06020 (PBT)

**SUPPLEMENTAL BRIEF IN SUPPORT OF THE MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF LIBERTY INTERNATIONAL UNDERWRITERS**

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This brief is submitted on behalf of Defendant, Liberty International Underwriters (“Liberty”) in support of its motion for summary judgment against Plaintiffs, Blackwater Security Consulting, LLC and Blackwater Security Training Center, Inc. (“Blackwater”) (Dkt. No. 55) that Blackwater is not entitled to insurance coverage for the claims asserted by the plaintiffs in the *Nordan* action (“Decedents”) because those claims are excluded from coverage as a result of the War/Terrorism exclusion contained in Liberty’s commercial umbrella insurance policy, no. LQ1-B71-200233-014 (“Liberty policy”).

Liberty’s summary judgment motion is based on Liberty’s claim that the Decedents’ deaths were “caused by, arising from or related in any way, directly or indirectly, to . . . ‘War and Military Action’ which includes without limitation . . . War, including undeclared or civil war, . . . Insurrection, rebellion, [or] revolution” *See* Tellner Decl., Ex. 18, LIU-BSC-000028 (Dkt. No. 55). In its Sur-Reply in opposition to Liberty’s motion, Blackwater claimed that the Iraq War does not qualify as a “war.” (Dkt. No. 70) Liberty submits this supplemental brief in order to bring to the Court’s attention recent admissions by Blackwater that the armed conflict in Iraq is a war, which admissions support Liberty’s motion for summary judgment.

On October 2, 2007, after the last brief on Liberty’s motion was filed, Erik Prince, President of Blackwater, gave sworn testimony before the House of Representatives Committee on Oversight and Government Reform. When discussing Blackwater’s tenure in Iraq, Mr. Prince declared, “This is war.” A true and correct copy of the relevant portions of Erik Prince’s testimony is attached hereto to the Declaration of Christopher J. Tellner (“Tellner Decl.”) as Exhibit A. (Tellner Decl., Ex. A, 8, 24.) Representative Dan Burton asked, “You’re in a war zone?” Mr. Prince replied, “Yes, sir.” (*Id.*, 17.) Mr. Prince testified further that Blackwater’s services ran “the full gamut of contracting and contract management in the stabilization section

or stabilization phase of the Iraq War” (*Id.*, 14.) Before his testimony, Mr. Prince submitted a statement to the Committee through counsel, recognizing the Iraq insurgents as enemies:

We also write today to ask that the Committee and its Members refrain from asking questions during the hearing that might reveal sensitive operational and technical information that could be utilized by our country’s implacable enemies in Iraq. . . . Operational details and individual identities could be of use to enemy insurgents in Iraq and to other terrorists.

(Tellner Decl., Ex. B.)

In light of these admissions and the substantial record already submitted by Liberty, Blackwater’s argument that War/Terrorism exclusion does not apply—*i.e.*, that the deaths of the Decedents were not “caused by, arising from or related in any way, directly or indirectly, to . . . War”—is insupportable. For all of the foregoing reasons, Liberty is entitled to summary judgment in its favor.

Dated: October 11, 2007

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Brief in support of the Motion for Summary Judgment of Liberty International Underwriters was served on this 11th day of October 2007, upon all counsel of record via electronic filing and/or First-Class Mail, postage prepaid:

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